



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0215]

RIN 1625-AA11

Regulated Navigation Area; Bridge 1 Structural Repairs at
Portsmouth Naval Shipyard, Kittery, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Piscataqua River surrounding Bridge 1 between Kittery, ME, and Seavey Island, ME. This RNA allows the Coast Guard to enforce speed and wake restrictions and limit vessel traffic through the RNA during operations involving bridge structural repairs, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during bridge structural repair operations.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until April 30, 2017. This rule has been enforced with actual notice from September 30, 2014 to [INSERT

DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0215]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade David B. Bourbeau, Waterways Management Division Chief at Coast Guard Sector Northern New England, at 207-347-5015 or e-mail at David.T.Bourbeau@uscg.mil.

If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register

A. Regulatory History and Information

On September 11, 2013, Sector Northern New England received notice of potential bridge work being conducted on Bridge 1 between Kittery, ME, and the Portsmouth Naval Shipyard on Seavey Island from September 1, 2014 through April 30, 2017. Construction will commence October 1, 2014.

On February 26, 2014, the U. S. Navy posted a notice in the Portsmouth Herald advising the public of the intent to file applications for approval of structural repairs to be made to Bridge 1. No comments or requests for public meeting were made.

On July 25, 2014, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) with respect to this rule (79 FR 43335) entitled "Regulated Navigation Area; Bridge 1 Structural Repairs at Portsmouth Naval Shipyard, Kittery, ME." No comments were received.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Waiting 30 days for this rule to become effective is unnecessary and impracticable. The bridge construction begins on October 1, 2014 and delaying this rule's effective date would inhibit the Coast Guard's ability to protect the boating public from the hazards associated with a dangerous maritime construction site. The Coast Guard did not have all of the details about the bridge construction project

that the Coast Guard needed in order to publish the final rule more than thirty days in advance of the effective date.

Furthermore, the policy goal of providing the public with enough time to prepare for compliance is largely met by the Coast Guard and Navy's public outreach efforts and publication of the NPRM.

B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The Portsmouth Naval Shipyard is the bridge owner and is contracting the structural repairs to be completed. The existing bridge is a steel girder structure approximately 300 feet long and 50 feet 7 inches wide. Existing vertical clearance will remain the same at 7 feet at MLW. Horizontal clearance is currently 57 feet and the new clearance will be 56 feet 6 inches. Existing granite block and steel reinforced abutments and piers will remain in place but will be reinforced with cladding around the abutments. As a result, the horizontal clearance will be reduced by six inches. The start of construction operations has been changed from the originally advertised September 1, 2014 to October 1, 2014. This change is reflected in the regulatory text

below.

The Coast Guard First District Commander has determined that this construction project poses dangers to the maritime public and this rule is necessary to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment.

C. Discussion of Comments, Changes and the Final Rule

For the reasons discussed above, the Coast Guard is establishing a RNA on the navigable waters of the Piscataqua River surrounding Bridge 1 which spans from Kittery, ME, to Seavey Island, ME from October 1, 2014 to April 30, 2017.

In order to mitigate the inherent risks involved in construction, it is necessary to control vessel movement through the area, therefore, the Coast Guard is establishing an RNA on the navigable waters of Piscataqua River surrounding Bridge 1 which spans from Kittery, ME, to Seavey Island, ME. Construction operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge construction zone. This will be achieved by implementing a five (5) knot speed limit and "NO WAKE" zone in the vicinity of the construction as well as providing a means to suspend all vessel

traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard may close the RNA described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advanced notice as possible.

Further, the speed limit of five (5) knots will be in effect at all times within the RNA and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain steering. Mariners will be advised of all closure dates and times via Local Notice to Mariners and Broadcast Notice to Mariners in advance of closure times.

The coordinates of this RNA described in this TFR differ slightly from those described in the NPRM because of a scrivener's error in the NPRM. The actual location of the RNA is all navigable waters of the Piscataqua River between Kittery, ME and Seavey Island, ME, from the surface to bottom, within a 300 yard radius of position 43°05'06"N, 070°44'29"W.

D. Regulatory Analyses

We developed this rule after considering numerous statutes

and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be minimal because this RNA only enforces a speed and wake restriction through a limited portion of the Piscataqua River, and will have limited traffic restrictions during operations involving bridge structural repairs, both planned and unforeseen therefore causing only a minimal delay to a vessel's transit.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of Bridge 1 from October 1, 2014 to April 30, 2017. The Coast Guard expects no significant economic impact on a substantial number of small entities, as mentioned in the REGULATORY PLANNING AND REVIEW section above, because this rule only requires vessels to reduce their speed through a limited portion of the Piscataqua River outside of the main channel and will have limited traffic restrictions during operations involving bridge structural repairs, both planned and unforeseen therefore causing only a minimal delay to a vessel's transit.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of

protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a RNA and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0215 to read as follows:

§165.T01-0215 Regulated Navigation Area; Bridge 1 Structural Repairs at Portsmouth Naval Shipyard, Kittery, ME.

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters of Piscataqua River between Kittery, ME and Seavey Island, ME, from surface to bottom, within a 300 yard radius of position 43°05'06"N, 070°44'29"W.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) Any vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction. Movement within the RNA is subject to a "Slow-No Wake" speed limit. All vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain steering.

(3) There may be times that the First District Commander or the Captain of the Port (COTP) finds it necessary to close the

RNA to vessel traffic. During times of limited closure, persons and vessels may request permission to enter the RNA by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 207-767-0303.

(4) Any vessels transiting in the RNA must comply with all directions given to them by the COTP or the COTP's on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; Maine State Police, Maine Marine Patrol or other designated craft; or may be on shore and communicating with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) All other relevant regulations, including but not limited to the Rules of the Road, as codified in 33 CFR Subchapter E, Inland Navigational Rules, remain in effect within the RNA and must be strictly followed at all times.

(c) Enforcement Period. This regulation is enforceable 24 hours a day from 12:01 a.m. on October 1, 2014 until 11:59 p.m. on April 30, 2017.

(d) Notification. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at 207-767-0303 or on VHF-Channel 16.

Dated: September 30, 2014.

V. B. Gifford,
Captain, U.S. Coast Guard,
Acting Commander, First Coast Guard District.

[FR Doc. 2014-24771 Filed 10/16/2014 at 8:45 am; Publication

Date: 10/17/2014]